IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8653 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT MANSUKHLAL GANDHI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for the Petitioner.
Mr. K.L.Pandya, Assistant GOVERNMENT PLEADER for the Respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 22/09/2006

ORAL JUDGMENT

The present petition has been preferred against the order dated 19th December, 2005 passed by the State Government, b y which the application of

the petitioner has been rejected without giving an opportunity of being heard.

2. I have heard the learned counsel for the petitioner who has mainly submitted that in pursuance of the policy/resolution of the respondent authority dated 2nd August, 2004, (Annexure “B” to the memo of the petition), there is a provision of transfer of fair price shop from one zone to another zone as per clause 11(4). The respondent authorities have not properly appreciated the policy under sub-clause and has, unilaterally decided the application preferred by the petitioner for transfer of the fair price shop dated 30th April, 2005. Neither District Supply Advisory Committee nor the State Government has heard the petitioner before passing the impugned order, whereby the application for transfer of fair price shop was rejected. Thus, there is a violation of principles of natural justice. Similarly situated another person's application has been allowed which order is at Annexure “F” to the memo of the petition. Thus, arbitrary usage of power has led to discrimination and hence the impugned order is

violative of Article 14 of the Constitution of India and the same deserves to be quashed and set aside. Had an opportunity of being heard been given to the petitioner, the order like Annexure “F” would not have been pointed out to the respondent authorities. This opportunity has not been given and therefore, the impugned order deserves to be quashed and set aside.

3. I have also heard the learned Assistant Government Pleader, who has fairly submitted that opportunity of being heard shall be given to the petitioner and a fresh decision shall be taken by the respondent authorities.

4. In view of this submission, the impugned order dated 19th December, 2005 passed by the respondent no. 1 (Annexure “E” to the memo of the petition) is hereby quashed and set aside, as the same has been passed without affording any opportunity of being heard to the petitioner. Neither the committee as referred hereinabove nor the respondent no.1 has heard the petitioner. Thus, the

petitioner shall be heard by the concerned respondent authority and thereafter, a fresh order shall be passed after taking into consideration all the necessary documents including report/opinion dated 20th June, 2005 given by the Mamlatdar, city Taluka, Surat and other other relevant documents which the petitioner shall present before the concerned respondent authorities. Rule made absolute to the aforesaid extent with no order as to costs. It is needless to say that the respondent authority empowered under Gujarat Essential Articles (Licensing, Control and Stock Declaration) order, 1981 shall pass a fresh order. A grievance has been ventilated about the authority of the concerned officer like section officer. All care shall be taken by the highest head that the designated authority should pass the order. Direct service permitted.

(D.N.Patel,J)

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